

# *United States Congress*

For Immediate Release  
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Contact: Carol Guthrie  
(202) 224-4515

## **CONGRESSIONAL LEADERS WARN AGAINST HHS EFFORTS TO LIMIT HEALTH CARE FOR LOW-INCOME CHILDREN**

*Baucus, Rockefeller, Dingell, Pallone, Waxman blast recent CMS actions restricting  
kids' coverage through Medicaid, Children's Health Insurance Program*

**Washington, DC** – Senate Finance Committee Chairman Max Baucus (D-Mont.), Finance Healthcare Subcommittee Chairman John D. Rockefeller, IV (D-WV), House Committee on Energy and Commerce Chairman John Dingell (D-MI), House Committee on Energy and Commerce Health Subcommittee Chairman Frank J. Pallone, Jr. (D-NJ), and House Committee on Oversight and Government Reform Chairman Henry Waxman (D-CA) expressed concern that the Department of Health and Human Services is endangering health coverage for low-income, uninsured American children with inappropriate changes to policies for Medicaid and the State Children's Health Insurance Program (CHIP). In a letter to HHS Secretary Michael Leavitt this week, congressional leaders blasted December 2007 action by the Centers for Medicare & Medicaid Services (CMS) that denied Ohio's request to extend health coverage to more children through Medicaid.

**"CMS can't just make unilateral, under-the-radar changes that keep poor kids from getting the doctor's visits and medicines they need,"** said Baucus. **"Congress made it clear in law that Medicaid and the Children's Health Insurance Program should be there for lower-income kids living without insurance, and the changes made by CMS are threatening to kick children out of the doctor's office and back into the dangerous world of the uninsured."**

**"Medicaid is a vital safety net for hundreds of thousands of West Virginians, and millions of families across the nation. I'm not going to let CMS use extra-legal means to deny West Virginia's children or anyone else of modest means access to the federal guarantee of health care coverage,"** Rockefeller said. **"CMS doesn't get to stack the deck through administrative fiat when they are unable to gain support in Congress for their misguided policies. Health care for our nation's children must be non-negotiable."**

**"With more than 46 million Americans without health insurance, State efforts to protect the health of more low-income citizens should be encouraged and supported. Instead, the Bush Administration is working to limit access to our nation's most successful and effective health care programs,"** said Dingell. **"The restrictions the Administration is imposing - on both SCHIP and Medicaid - are harmful and will undoubtedly put the health of thousands of our most vulnerable children at unnecessary, indefensible risk."**

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**"For six years, President Bush had no problem giving states the flexibility we all know they need to reach both children and families who do not have health insurance, but that all changed last year," Pallone said. "At a time when states are aggressively working to ensure that their most vulnerable populations have access to health coverage, the Bush administration should not be imposing harmful and unattainable conditions that make it impossible for states to reach more people."**

**"The Bush Administration has no authority to make this kind of decision," said Waxman. "Even by their standards, it is mean-spirited and really counterproductive. They simply can't decide that the federal government is no longer going to share in the cost of health care for low-income kids. That is the exact opposite of what Medicaid and SCHIP were designed to do."**

The congressional leaders called the December 20, 2007 denial of Ohio's state plan amendment (SPA) an action that exceeds the statutory authority of CMS and one that, if pursued elsewhere, will result in millions of children living without health care. The decision springs from a Department of Health and Human Services directive issued on August 17, 2007 to limit states' efforts to cover many lower-income uninsured children on the premise that millions of these children could obtain private coverage. However, coverage offered to lower-income families may not be affordable, and may not offer comparable care.

The text of the Tuesday letter follows here.

January 14, 2008

The Honorable Michael O. Leavitt  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Leavitt:

We are writing to express our very serious concerns about the strategy your Department is pursuing with regard to children's health care coverage through Medicaid and the State Children's Health Insurance Program (CHIP). Recent actions by the Centers for Medicare & Medicaid Services (CMS) regarding several states – including Ohio, Louisiana, New York, Wisconsin and Oklahoma – are just the latest in a growing list of unilateral changes to longstanding law and policy without statutory authority. This administration's actions deny healthcare to the uninsured children of working families who are lawfully entitled to care at a time when economic pressures on families are high. We strongly urge you to immediately reverse this course of action.

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As Members of Congress who are intimately familiar with the “original objectives” of CHIP, we are profoundly troubled by recent administrative efforts to limit the broad flexibility afforded states under the original CHIP statute and to limit longstanding flexibility under Medicaid. Despite repeated warnings about the legality of the August 17, 2007, directive and the absence of a formal rulemaking process, your administration has continued to pursue a policy that is contrary to federal law and that limits children’s access to healthcare. Federal law does not authorize CMS to effectively impose an income eligibility cap in CHIP or Medicaid, nor does it require states wanting to cover children at levels higher than 250 percent of poverty (or \$43,000 a year for a family of three) to have to use 100 percent state-only funds to do so.

Nearly 9 million children in this country lack health insurance. These children aren’t uninsured because their families are turning down affordable, comprehensive private coverage. These children are uninsured because private coverage is either not offered at all or otherwise inaccessible. The August 17 directive prohibits states from covering more uninsured children on the *theory* that millions of children eligible for CHIP have access to private coverage that their families can afford and that meets their needs. The *practical effect* of this misguided perspective is that millions of children will continue to be uninsured. The states that have decided to extend coverage to additional low-income children have determined that these children indeed need that coverage and have put their state funds on the line to that end. CHIP and Medicaid are designed to assure that the federal government would be a partner in such efforts to provide health care coverage to children, but CMS’s actions have unilaterally abrogated that partnership.

We are particularly disturbed by recent attempts to limit the Medicaid guarantee of health coverage by applying the August 17 directive and existing CHIP law to children in Medicaid expansion states. When CHIP was created in 1997, nearly 10 million children were uninsured, and the enhanced matching rate was intended to be an incentive for states to cover more children. However, nothing in the CHIP statute affects underlying Medicaid eligibility or states’ ability to expand coverage to children using Medicaid funds. In fact, states that elect to structure their CHIP programs as Medicaid eligibility expansions for children must follow all Medicaid rules. The Medicaid statute does not prescribe an income eligibility limit, nor does the existence of the CHIP program eliminate the ability of states to use Medicaid as a way to provide coverage for children. CHIP was created to expand, not restrict, states’ ability to cover children.

The December 20, 2007, denial of Ohio’s state plan amendment (SPA) to expand coverage to uninsured children through the Medicaid program on the grounds that “the state will claim Federal matching funds at a rate other than the rate set forth in the Social Security Act...” is substantiated neither by federal law nor the state’s request. Ohio proposed to cover new children under Medicaid who have not been determined by the state to be eligible for CHIP. As such, Ohio was clearly within its rights to request regular FMAP under Medicaid for that expansion population of children. We, therefore, strongly urge you to reverse CMS’s decision.

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The President has made repeated statements about his desire to cover more uninsured children. However, the actions of your Department contradict those statements. Moreover, the Department's actions are inconsistent with federal law. Instead of supporting state efforts, this administration is punishing states for trying to reduce the number of uninsured children. Unfortunately, the net effect of these Medicaid and CHIP policies is that fewer children will have access to comprehensive healthcare coverage, including fewer children in families earning below \$35,000 a year. You can and should reverse this serious course of action immediately.

We appreciate your prompt attention to this important matter and request a response no later than January 31, 2008.

Sincerely,

Senator Max Baucus  
Chairman  
Senate Committee on Finance  
Commerce

Representative John D. Dingell  
Chairman  
House Committee on Energy and  
Commerce

Senator John D. Rockefeller, IV  
Chairman  
Subcommittee on Health Care  
Senate Committee on Finance

Representative Frank J. Pallone, Jr.  
Chairman  
Subcommittee on Health  
House Committee on Energy and  
Commerce

Representative Henry A. Waxman  
Chairman  
House Committee on Oversight and Government Reform

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